

HEIRS OF ROBERT FULTON.

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APRIL 9, 1836.

Mr. E. WHITTLESEY, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to which was referred the petition of the heirs of Robert Fulton, report :

That the petition was referred to a select committee at the 1st session of the 21st Congress, whose report was made on the 3d of March, 1830.

Two specific grounds for relief are noticed in the report. "1st. The employment of the steam-boat Vesuvius, by General Jackson, when New Orleans was threatened with invasion, in 1814, to transport the troops of the United States; and that while in said service the said boat ran aground, and, from a fall of water, remained in that situation for more than three months, whereby large profits were lost to the said Robert Fulton. 2d. The employment of the said Robert Fulton to superintend the construction of the steam frigate Fulton, at New York, in the year 1814." But they reject these as a substantive ground for specific remuneration, because they were not adequate to the services rendered.

The committee enlarged on the benefits the different sections of the United States had derived from the skill and ingenuity of Mr. Fulton, in successfully propelling boats and machinery by the use of steam.

And from the response made by the country in the liberal grants made by Congress to General La Fayette, for his services during the revolution, it accompanied the report by a bill granting a township of land to the petitioners, which they supposed would receive the sanction of Congress and of the country.

The bill was not acted on during that Congress. At the 1st session of the 23d Congress, the memorial was presented to the Senate, and referred to the Committee on Naval Affairs. Mr. Robbins, on the 16th of June, 1834, reported a joint resolution, directing the Secretary of the Treasury to raise an account against Robert Fulton, and to charge all the money that had been paid to him, and to credit him with such sum as should indemnify him for all losses by the impressment of his steam-boat into the service of the United States, during the late war, on the Mississippi river; and also that he be credited with such further sum as he was entitled to for superintending the building of the steam battery, in the harbor of New York, for the use of the United States, during the late war. The balance against the United States, if any, to be paid to the petitioners.

This resolution was not accompanied by a report. It was not taken up afterwards.

At the present session the petition having been referred to the Committee on Claims, its early attention was devoted to an examination of the papers. It was soon discovered there was a great deficiency in the proof, and an extensive correspondence was opened with the Departments, and with those from whom it was supposed information might be obtained. In the opinion of the committee, there are three distinct grounds for remuneration.

1st. As early as the 30th of March, 1810, Congress passed an act, appropriating five thousand dollars to defray the expense of trying actual experiments, when the President of the United States should deem it expedient to make them, and when made, to be under the immediate direction of the Secretary of the Navy, for the purpose of ascertaining with precision, how far the torpedo or submarine explosion might be usefully employed as engines of war, and he was directed to report to Congress the result of the experiments, with his opinion thereon.

The Secretary of the Navy caused such experiments to be made, under the superintendence of Mr. Fulton, who had devoted much of his time and large sums of money in bringing the torpedo, or submarine explosions, to perfection (as he supposed) as engines of war, and reported the result at the second session, eleventh Congress, on the 14th of February, 1811.

The report of the committee that accompanied the act of the 30th of March, 1810, is printed in the State Papers, by Gales and Seaton, on Naval Affairs, page 210, and the report of the Secretary of the Navy, accompanied by the report of the gentlemen called on to witness the experiments, with Commodore Rogers's journal, are found in the same document, page 234.

The committee did not decide on the merits of the invention, but that in the judgment of a majority, Mr. Fulton had not proved by the experiments that the Government ought to rely on the system as a means of national defence. This committee entertain the opinion, that whatever time Mr. Fulton devoted to this system of defence, or to the trying of any experiments to test its utility, or whatever money he expended in either object, at the request of the Government, either express or implied, creating a liability in individual cases, that the United States ought, in justice, to make a compensation to the petitioners, if it has not been already done, to the deceased ancestor.

The committee has not ascertained whether any part of the sum of five thousand dollars was expended to remunerate Mr. Fulton for his time and expenses or not.

2d. Mr. Fulton took out a patent for his invention of a steam battery, and the United States caused a steam frigate to be constructed to defend the harbor of New York. He superintended the construction of this frigate, and devoted to its completion and perfection all his zeal, energy, and inventive skill and science. His patent was devoted to the use of his country.

It is said he received no compensation for these services, nor for the use of his invention. There is no evidence to disprove the assertion before the committee. He was entitled to be rewarded for them, liberally and generously.

An attempt was made to obtain a data from the board of navy commissioners, whereby the committee might be enabled to set a just value on Mr. Fulton's services, in the instances mentioned.

The committee entertain the opinion that the eminent inventive powers of Mr. Fulton should form the bases of the estimate. Gentlemen of science

in the mechanic arts, and in the construction of vessels of war, should be consulted, as well to the value of Mr. Fulton's time to the country, as to the value of his invention of the steam frigate for harbor defence.

3d. It is stated, in the memorial, that Gen. Jackson impressed a steam-boat at New Orleans, in December, 1814, called the *Vesuvius*, and that the boat, when in the military occupation of the United States, grounded and so remained for a period of about three months.

Testimony has been produced to prove what profits the owners would have realized if the boat had not been impressed. These estimates show the profits would have been great, beyond a parallel. In the investigation of the claim, the committee sought for, and obtained, information from the different Departments, and it is contained in copies of letters, contracts, and reports, which were unknown to the committees that have heretofore had charge of this petition.

From a statement made by Captain Harrod, in a printed pamphlet presented with the petition, the steam-boat *Vesuvius* was taken into the public service by the order of General Jackson; but whether it was so in the service by contract or impressment, did not appear.

The committee addressed the following letter to the President, to obtain information on that point:

WASHINGTON, *January 7, 1836.*

SIR: I am directed by the Committee of Claims, to which is referred a petition for the relief of the heirs of the late Robert Fulton, to transmit to you a printed pamphlet, containing documents relative to the claim of the heirs of Robert Fulton, and to call your attention to the deposition of Captain Charles Harrod. On page nine he states, in the year 1814, in December, the steam-boat *Vesuvius*, then navigating the Mississippi river, was taken into the public service by order of the commanding General Jackson.

The committee wish to know, (if within your recollection,) whether said boat was taken into the public service, by impressment or contract.

If you are unable to state the manner said boat was taken into the public service, the committee will thank you to refer them to some person from whom the information may be obtained.

Very respectfully, yours,

E. WHITTLESEY.

His Excellency ANDREW JACKSON,
President of the United States.

To which the President returned the following answer:

"I have no knowledge of the steam-boat being in the public service until after the battle of the eighth of January, 1815. When wanted for the public service before, she was reported to be aground on the batture, and it was rumored that she was run aground by the owners, to prevent her from being captured by the British.

Whether this report was true or not, I never inquired. For all service after the battle of the eighth was paid by the quartermaster.

A. J.

Mr. Livingston was applied to, at a subsequent period, to communicate his information to the committee on the subject referred to in the letter to the President.

He states in his answer, under date of January 27, 1836, that the said boat was impressed, and he thinks he was sent to signify the order to the captain; that the boat was put in a position to receive the cannon on board; the machinery of the boat was prepared to be defended by suspending bales of cotton over the gunwales; and that while she was anchored on the batture, at the upper part of the city, the water fell, and in a day or two she was left dry on the sand bar.

The Third Auditor furnished the committee with copies of the following orders:

NEW ORLEANS, *December 19, 1814.*

CAPTAIN CLEMENTS, *commanding the steam-boat Vesuvius:*

SIR: You will forthwith proceed up the river Mississippi, under the orders and directions of Colonel Andrew Hynes, and report yourself to Major General William Carroll.

I am, sir, respectfully,

Your most obedient servant,

ANDREW JACKSON,

Major General.

NEW ORLEANS, *December 30, 1814.*

SIR: You will consider the steam-boat in the service of the United States, and hold her in readiness to move at a moment's warning, to such point as she may be ordered by the commanding general.

By order:

THOMAS BUTLER,

Aid-de-camp.

These show the President is mistaken in his recollection as to the employment of the boat before the eighth; and the statement of Mr. Livingston removes the prejudice that might exist against the owners, under the rumor that they intentionally run the boat aground.

With other documents transmitted from the Third Auditor's Office, is the copy of a contract made between Mr. Monroe, then Secretary of War, on behalf of the United States, and Mr. Fulton, on the 27th of December, 1814, in which the United States agreed to advance Mr. Fulton the sum of forty thousand dollars, to be expended in fitting up and repairing four steam-boats, to wit, the Vesuvius, the Etna, the New Orleans, and the Natchez, trading and intending to trade on the Mississippi river, and the Buffalo steam-boat intended to trade on the Ohio river.

Mr. Fulton agreed to repay this sum of money to the United States, in the transportation of troops and freight for certain stipulated prices; and if not repaid in that way within five years, then he was to repay the amount so due in money. The existence of this contract was not known at New Orleans, when General Jackson's order of December, 30, 1814, was issued to Captain Clements to hold the boat in readiness.

By the terms of the contract the boats were to be used in the transportation of the troops and munitions of war to and from New Orleans, and it was not in the contemplation of the parties that the boats were to be used

in assailing the enemy, or in defending any portion of the country from an invading force.

Mr. Livingston says, "it was intended that she (the Vesuvius) should be brought down the river to enfilade the enemy's works on their march, if they should attack ours."

It has been noticed before that the boat was being prepared for military operations, when she grounded, having a part of her cannon on board, and undergoing other preparations for defence and security.

As the contract was made for the employment of this boat before she was last ordered into the service by General Jackson, if she had been used in transporting troops or munitions of war between New Orleans and Louisville, according to the stipulations of the contract, the committee would have considered the compensation to have been fixed by the contract, and that the boat was at the risk of the owner; but in this case she was manned and prepared for attacking or resisting the enemy, and was destined to be used in military operations below the city of New Orleans, which was not embraced in the contract. She grounded when under orders, and actually receiving her loading on board, for the service mentioned.

With this evidence the committee decide that the boat was not in the service, within the meaning of the contract, and that she was at the risk of the United States.

Mr. Hagner furnished the committee with an account headed "extract from a list of unsettled accounts against the quartermaster general's department, in district No. 7, returned by Quartermaster General G. Knight, and received in October, 1815."

The committee refer to this paper, and make the same a part of this report.

One item of the account is for transporting, on board of the Vesuvius, in the spring of 1815, a part of the Kentucky troops from New Orleans to Natchez - - - - - \$2,025 00

Another item is for mattresses and pillows taken from the boat for the use of the sick - - - - - 390 00

Another item is for transporting troops and articles from Natchez to New Orleans - - - - - 146 12

Another item is for two days use of boat under orders of December 19th, 1814, at \$250 per day. For 83 days she was aground, being from the night of the 30th December, 1814, to the 12th March, 1815 - - - - - 21,250 00

The second item was paid F. B. Ogden, attorney, 4th October, 1825.

This account is important in establishing the time the boat was aground, and the price then fixed for her detention.

This account remains open at the Treasury, except as to the second item.

The said sum of \$40,000 remaining outstanding on the books of the Treasury, without the allowance of any credits, a suit was commenced against Mr. Fulton's representatives, in the southern district of New York, previous to the year 1825; and it appears from a report made by the United States attorney, from May, 1825, to February, 1826, "that, on the trial of said cause, a verdict was rendered against the United States, and that a motion was then pending for a new trial, on the ground that the United States are not responsible for the act of seizure of General Jackson." The said attorney says: "admitting this responsibility, and the evidence is fully competent to support the verdict."

The papers furnish no further information as to what was set up as a defence to the suit.

Before coming to any definite conclusion in this case, it is necessary to know what was allowed by the jury on the trial referred to: this will probably require much time for investigation, and a voluminous correspondence.

In order that all the information may be furnished of which the case is susceptible, the committee think it is expedient to refer the whole matters mentioned above to the Secretary of the Navy, to examine and report thereon; and for that purpose a joint resolution is submitted.

A resolution referring the petition and papers of the heirs of Robert Fulton, deceased, to the Secretary of the Navy, to report thereon to Congress:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled:

1. That the petition and papers of the heirs of Robert Fulton, be referred to the Secretary of the Navy, to state an account between the United States and said heirs, by debiting them with all the moneys paid to the said Robert Fulton, and not settled on the books of the Treasury Department.

2. To credit the said heirs with all moneys advanced or expended by the said Fulton, in and about the business of the United States, committed to his care, or about which he had an agency.

3. To credit the said heirs a compensation commensurate with the value and importance of the services rendered by the said Robert Fulton to the United States, in inventing a system of coast and harbor defence, and in testing its utility, so far as he was employed or engaged to render such services by the authorities of the United States, or when such services were recognised as having been rendered for the United States, previous to or during the late war with Great Britain.

4. To credit the said heirs with the like compensation, for the services of the said Robert Fulton, for inventing and in superintending the construction of a steam frigate, at New York, during and after said war.

5. To credit the said heirs with a just and equitable compensation for the detention of the steam-boat Vesuvius at New Orleans, from the 30th of December, 1814, to the 12th of March, 1815, both days inclusive, being the time the said boat remained aground by reason of her being impressed into the service of the United States, and grounded when in said service.

2d. *Be it further resolved*, That the said Secretary of the Navy be authorized to take such further testimony as he shall think necessary, and that he ascertain what defence was made to the suit in favor of the United States, against the representatives of Robert Fulton, in the southern district of New York, and what composed the items of set-off to the claim of the United States; and that said Secretary report his proceedings at the next session of Congress.